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CONCORD, N.H.

Honorable Charles Griffin  
Speaker of the House of Representatives  
State House  
Concord, New Hampshire

Dear Sir:

You have directed my attention to Senate Bill No. 113, An Act relative to the rate of tax on interest and dividends, and you have inquired whether the same constitutes a "money bill" within the meaning of Constitution of New Hampshire, Part 2nd, Article 18. I answer in the affirmative.

Senate Bill No. 113 is an original bill, as distinguished from an amendment to some other bill. By its terms it would repeal the existing section 1 of chapter 78 of the Revised Laws (Taxation of Incomes); and substitute in its place a new section 1. In its present form section 1 imposes an annual tax upon incomes at the average rate of taxation levied upon other property throughout the state; the new section 1 embodied in Senate Bill No. 113 would read as follows:

"1. Rate. An annual tax upon incomes shall be levied at the rate of three and one-half per cent."

The constitutional provision cited reads:

"All money bills shall originate in the house of representatives; but the senate may propose, or concur with, amendments, as on other bills."

I find that this provision has been discussed but once by our Supreme Court. In Opinion of the Justices, 70 N.H. 642, the Court observes that Massachusetts has an identical provision in its constitution; and it notes with approval that the Supreme Judicial Court of that Commonwealth in Opinion of the Justices, 126 Mass. 557, considers the provision to refer to "a bill imposing a direct tax upon the people."

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In the language of the Massachusetts court itself,

" . . . we are of opinion that the exclusive constitutional privilege of the House of Representatives to originate money bills is limited to bills to transfer money or property to the State . . ."  
126 Mass., 601.

The terms "money bills" and "bills for the raising of revenue" are said to refer to "all bills by which money is directed to be raised upon the subject for any purpose," Story, Constitution of the United States (5th ed.) section 875. Thus, Article I, section 7, subsection 1 of the federal constitution is identical with out Article 16 except that the words "bills for the raising of money" is employed for the term "money bills." Of the authority granted to the House of Representatives by the federal provision Story says

"And, indeed, the history of the power abundantly provides that it has been confined to bills to levy taxes in the strict sense of the word . . ."  
Id., section 880; see also 82 C.J.S., Statutes, section 12.

The Kentucky Court of Appeals in Comm. v. Bailey, 81 Ky. 395, 398-399, notes that by the phrase "bills for raising revenue" the framers of the constitution of that state meant what are usually termed "money bills", and it says:

"A bill for raising revenue' as we understand it from the debates on the federal constitution, authorities and text writers, embraces all appropriations of money for the public treasury where the bill either provides for the levy of duties or taxes, capitation or ad valorem, upon the people, or is a part of a system of laws or another bill which does so provide."

The fact that the purpose and effect of a bill may be to reduce existing taxes does not change its nature as a "money bill" if it itself provides for the levy of any tax. The principle is succinctly stated in a headnote to the case of Perry County v. Railroad Company, 58 Ala. 546:

"A bill for raising revenue, as termed in the Constitution is a bill providing for levy of taxes as a means of collecting revenue -- hence a bill for reducing taxation, if it provides for collecting revenue, is still a bill for 'raising revenue.'"

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While the authorities set forth above would seem to lead inevitably to the conclusion stated above, I would add a cautionary note. I am advised that notwithstanding the directive of Article 18, it has been the practice from time to time in the past to receive into the House bills of a nature similar to the present which originated in the Senate, and to enact the same. It is my further understanding that such bills have been limited to bills amending existing revenue laws. This practice, if it actually exist, may constitute an anomaly in the interpretation of Article 18 which may well be taken into account in connection with the pending legislation. I must leave open the question of fact whether such practice in fact does exist.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

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